

IV. B. 3. Historical and Archaeological Properties

- a) Background. The Congress of the United States of America passed the National Historic Preservation Act in 1966, in the wake of years of federally funded projects, such as urban renewal, which irretrievably destroyed important historical and archaeological resources to

“....provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments....”

The Act, as amended, has established the Federal Government’s policy on historic preservation as well as several key implementation components:

National Register of Historic Places which is maintained by the Secretary of the Interior,

State Historic Preservation Officers (SHPOs), appointed by Governors, which coordinate preservation programs within States and with Federal agencies,

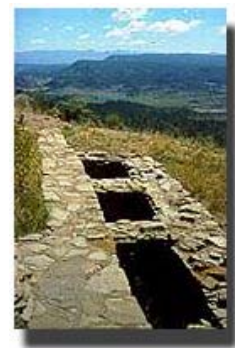
Tribal Historic Preservation Officers (THPOs), certified tribal equivalents of SHPOs, and the

Advisory Council on Historic Preservation (ACHP) which advises the President and Congress on preservation matters and reviews federally assisted actions.

Section 106 of the Act requires Federal agencies, prior to taking action to implement an undertaking, to take into account the effects of their undertaking on historic properties and afford the ACHP a reasonable opportunity to comment regarding such an undertaking. There is a very rigid protocol for accomplishing this analysis and it is commonly referred to as the Section 106 Process.



Chimney Rock
archaeological site





The Act has been revised several times since its original passage to streamline processing; emphasize better outreach; take into account Native American concerns; lessen the ACHP's direct consultation role to some degree; and implement other measures more effectively.

A key point to remember is that the National Historic Preservation Act applies only to the direct and indirect activities of Federal agencies unlike the Endangered Species Act that covers the actions of all Americans.

b) Governing Legislation, Regulations, and Other Directives.

(1) Federal.

- (a) National Historic Preservation Act of 1966, as amended, (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470-470t).
- (b) Archaeological and Historic Preservation Act of 1974, (P.L. 93-291; 88 Stat. 174; 16 U.S.C. 469).
- (c) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971.
- (d) 36 CFR 800, Code of Federal Regulations, Protection of Historic Properties.
- (e) Title 7, Part 1b and 1c, Code of Federal Regulations, U.S. Department of Agriculture's National Environmental Policy Act.
- (f) National Environmental Policy Act, 42 U.S.C. 4321.
- (g) 1906 Antiquities Act, (P.L. 59-209; 16 U.S.C. 431)
- (h) 1935 Historic Preservation Act - National Historic Landmarks, (P.L. 74-292; 16 U.S.C. 461-467).
- (i) Federal Land Policy and Management Act of 1976.
- (j) 7 CFR 43, Regulations for Archaeological Resources Protection Act.
- (k) Archaeological Resources Protection Act of 1979, (P.L. 96-95; 93 Stat. 721, 16 U.S.C. 470).
- (l) National Historic Preservation Act Amendments of 1980, (P.L. 96-515; 94 Stat. 2987; 16 U.S.C. 470).
- (m) American Indian Religious Freedom Act of 1978, (P.L. 95-341; 42 U.S.C. 1996).

(2) State.



- (a) Colorado Revised Statutes, Titles 24, Article 80, Historical, Prehistorical, and Archaeological Resources.
- (b) Colorado Revised Statutes, Title 24, Article 80.1, Register of Historic Places.
- (c) Colorado Revised Statutes, Title 29, Article 20, Local Government Land Use Control Act of 1974.
- (d) Colorado Revised Statutes, Title 24, Article 65, Colorado Land Use Act.
- (e) Colorado Revised Statutes, Title 18, Article 13, Section 101, Abuse of a corpse.

c) Policy.

- (1) Federal. The National Historic Preservation Act states that, “.....the spirit and direction of the Nation are founded upon and reflected in its historic heritage. Historical and cultural foundations of the United States should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people. Historic properties significant to the Nation's heritage have been lost or substantially altered. The preservation of this irreplaceable Heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.”

At the earliest stages of consideration of an application, Rural Development environmental reviewers should identify any properties that are listed in, or may be eligible for Listing in the National Register of Historic Places which are located within the project's area of potential environmental effects. Consultation should be undertaken directly with the SHPO, the appropriate THPOs (where applicable), and the interested public (i.e. Indian Tribes) in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them. Native American groups having a historic interest in the locale encompassing the project area should also be consulted to determine the potential for adverse effects to sites of religious and traditional use.

Section 106 of the Act (commonly referred to as “the Section 106 Process”) should be followed and finalized prior to the completion of the Rural final Development National Environmental Policy Act (NEPA) environmental review document for any pertinent Rural Development action. Following is a summary of the overall Section 106 Process that was simplified in the late 1990s:

Step 1: Initiate the Section 106 Process:

Establish that the Federal action would be an “undertaking”.
Identify the appropriate SHPO and THPOs to be contacted.

Plan to adequately involve the public.
Identify other potential consulting parties.

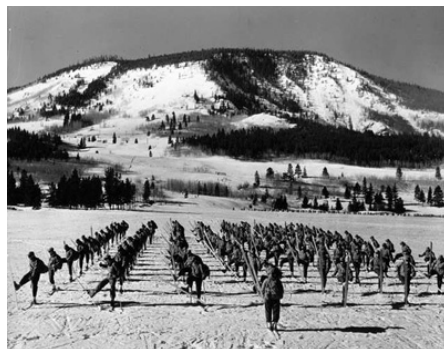
Step 2: Identify Historic Properties:

Determine the scope of effects to historic properties.
Identify historic properties (listed on the NRHP or eligible).

Evaluate historic significance:

National Register criteria for evaluation: “The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.”



Camp Hale, Colorado:
Potential consideration
based on Criteria A, B, C, and D

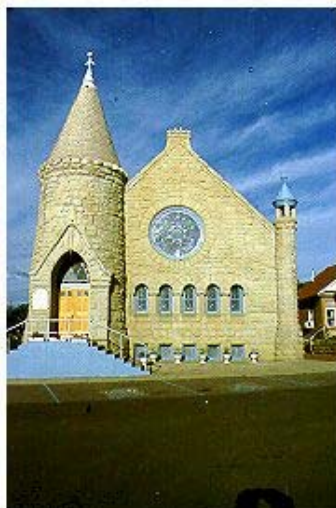
Exceptions to National Register criteria:

- (a) A religious property deriving primary significance from architectural or artistic distinction or historical importance.

- (b) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event.
- (c) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.
- (d) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
- (e) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.
- (f) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- (g) A property achieving significance within the past 50 years if it is of exceptional importance.



Indian Grove



First Baptist Church



Marble City State Bank Building



HISTORICAL AND ARCHAEOLOGICAL PROPERTIES

IV.B.3

Mosca vicinity
(Listed, NRHP)



Buckley Ranch
Hartsel, CO
(Listed, NRHP)



Argentum Mining Camp
Lake City vicinity
(Listed, NRHP)



Hayden Rooming House
Hayden, CO
(Listed, NRHP)

Trinidad, CO
(Listed, NRHP)

Marble, CO
(Listed, NRHP)



Reimer-Smith Oil Station, Holyoke
Holyoke, CO
(Listed, NRHP)



Missouri Heights School
Carbondale, CO
(Listed, NRHP)



Canon City State Armory
Canon City, CO
(Listed, NRHP)



Step 3: Assess Adverse Effects:

Apply the criteria of adverse effect to historic properties:

Physical destruction of or damage to;
Alteration of;
Removal of;
Change of the character of;
Change of the setting of;
Introduction of visual, atmospheric or audible elements of;
Neglect of; and/or
Transfer, lease, or sale of out of Federal ownership/control.

Step 4: Resolve Adverse Effects:

Continue consultation.

- (2) State. The general assembly of the State of Colorado has declared that sites and structures possessing historical significance are cultural resources of this state; that the preservation of such resources is in the interest of the citizens of the state; and that the planning and activities of state agencies should include the preservation of such resources. It is the intent of the general assembly to provide that such resources be preserved to the extent possible for the education and enjoyment of the residents of this state, present and future.

The Colorado Historical Society (CHS) has been authorized by the general assembly to issue or deny permits for the investigation, excavation, gathering, or removal from the natural state of any historical, Prehistoric, and archaeological resources within the State, and determine whether or not the applicants for such permits are duly qualified to conduct investigations in the field for which the permit is requested.

The CHS issues permits only for State lands, not Federal lands. Should any Rural Development activities affect archaeological or historic resources on Federal lands, then a Federal Antiquities permit would be required.

When the CHS has cause to believe a person has engaged or is engaging in any unlawful conduct, defined as knowingly or willfully appropriating, excavating, injuring, or destroying any historical, Prehistoric, or archaeological resource on public land, it may apply for and obtain a temporary restraining order or injunction prohibiting further unlawful action.

d) Classification.

- (1) Resource.

- (a) National Register of Historic Places, listed property (resource to be protected).



- (b) National Register of Historic Places, eligible property (resource to be protected).
 - (c) Potential property - resource over 50 years old (resource to be considered for protection).
 - (d) National Historic Landmark: National Historic Landmarks are properties recognized by the Secretary of the Interior as possessing national, as opposed to local or state, significance. All National Historic Landmarks are automatically placed in the National Register of Historic Places
- (2) Type of impact:
 - (a) No historic property found (SHPO and THPO consultation required).
 - (b) No effect (SHPO and THPO consultation required).
 - (c) Adverse effect (SHPO, THPO, and ACHP consultation required).
- (3) Types of Properties Eligible for the National Register of Historic Places:
 - (a) Buildings.
 - (b) Structures.
 - (c) Sites.



(d) Districts.

(e) Objects.

e) Agency Jurisdiction.

- (1) Federal. Whenever an environmental assessment indicates that properties included in or eligible for inclusion in the National Register of Historic Places may be adversely impacted by the proposed action, the Advisory Council on Historic Preservation (ACHP) shall be notified when required under the procedures of Section 106 of the National Historic Preservation Act. Contact the ACHP at:

Advisory Council on Historic Preservation
Don Klima, Director
12136 West Bayaud Avenue
Suite 330
Lakewood, Colorado 80228

(303) 969-5110 (Office)
(303) 969-5115 (FAX)

<http://www.achp.gov>

- (2) State. Initially confer with the Colorado State Historic Preservation Officer (SHPO). The contacts for the SHPO are:

Colorado Historical Society
State Historic Preservation Officer
Intergovernmental Services
1300 Broadway
Denver, Colorado 80203

Dr. Susan M. Collins, Dep. St. Hist. Pres. Off.. (Archaeology): (303) 866-2736

Kaaren Hardy, Intergovernmental Services Director:

(303) 866-3398

FAX: 303-866-2711

<http://coloradohistory-oahp.org/>

- (3) Indian Tribes. Initially confer with the following tribal organizations who have historically been present in Colorado and who may attach religious or cultural significance to historic properties that might be affected by an Agency undertaking. A complete list should be obtained from the State Environmental Coordinator.



- (4) Regional and local historical societies. Initially confer with regional and local historical societies, as appropriate. A complete list should be obtained from the State Environmental Coordinator.
 - (5) Archaeological and historical departments of colleges and universities. Initially confer with archaeological and historical departments of colleges and universities, as appropriate. A complete list should be obtained from the State Environmental Coordinator.
 - (6) Museums. Initially confer with museums, as appropriate. A complete list should be obtained from the State Environmental Coordinator.
- f) Location of Resource. The entire current National Register of Historic Places (NRHP) may be accessed at the following web-sites:

Colorado Historical Society:

"Directory of Colorado State Register Properties"
(NRHP properties only)

<http://coloradohistory-oahp.org/1503directory/clickmap.htm>

U.S. Department of the Interior:

"National Register Information System"
(NRHP and Colorado State listed properties shown)

<http://www.nr.nps.gov/>

A current listing of National Historic Landmarks in Colorado may be accessed at the following web-site:

Colorado Historical Society:

"National Historic Landmarks"
(Directory of districts and individual properties, listed by county)

<http://coloradohistory-oahp.org/1503directory/nation.htm>

A current listing of cultural resource contacts within Colorado may be accessed at the following web-site:

Colorado Historical Society:

“Directory of Cultural Resources Management Agencies, Consultants and Personnel of Colorado”

(Directory of pertinent agencies, consultants, museums, historical societies, colleges, universities, associations, and other organizations in Adobe *Acrobat* format)

<http://coloradohistory-oahp.org/preserve/pubs/1502.pdf>

Current forms used for submittals to the Colorado Historical Society may be accessed at the following web-site:

Colorado Historical Society:

“Cultural Resource Forms”

(Forms and guides in Adobe *Acrobat* format)

<http://coloradohistory-oahp.org/crforms/crforms.htm>

An illustrated technical discussion of architectural vernaculars for Colorado may be accessed at the following web-site:

Colorado Historical Society:

“A Guide to Colorado Architecture”

(Discussions of different architectural style, by name)

<http://coloradohistory-oahp.org/architecture/introguide.htm>

g) Key Definitions of Section 106 of the National Historic Preservation Act from 36 CFR Part 800.

<i>Act</i>	The National Historic Preservation Act of 1966, as amended, 16 U.S.C. Parts 470-470w-6. [36 CFR Part 800.16 (a)]
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<i>Advisory Council on Historic Preservation</i>	See the definition under “ <i>Council</i> ”.
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<i>Area of potential effects</i>	The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. [36 CFR Part 800.16 (d)]
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<i>Council</i>	The Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council. [36 CFR Part 800.16 (g)]
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- Criteria of adverse effect* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.... [36 CFR Part 800.5 (a) (1)] Adverse effects on historic properties include:
1. Physical destruction of or damage to all or part of the property;
 2. Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary of the Interior's "*Standards for the Treatment of Historic Properties*" [36 CFR Part 68];
 3. Removal of the property from its historic location;
 4. Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;
 5. Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
 6. Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
 7. Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

[36 CFR Part 800.5 (a) (2)]

Effect Alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register of Historic Places. [36 CFR Part 800.16 (i)]

Historic property Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places which includes both properties formally determined as such by the Secretary of Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe



or Native Hawaiian organization and that meet the National Register criteria. The term, "eligible for inclusion in the National Register", includes both properties formally determined as such in accordance with the regulations of the Secretary of the Interior and all other properties than meet the National Register criteria. [36 CFR Part 800.16 (l)]

Indian tribe

An Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. [36 CFR Part 800.16 (m)]

Local government

A city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State. [36 CFR Part 800.16 (n)]

National Register:

The National Register of Historic Places maintained by the Secretary of the Interior. [36 CFR Part 800.16 (q)]

National Register Criteria: The criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register in 36 CFR Part 60.4:

National Register criteria for evaluation. The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (1) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (2) that are associated with the lives of persons significant in our past; or



- (3) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) that have yielded, or may be likely to yield, information important in prehistory or history.

[36 CFR Part 800.16 ®]

<i>Programmatic Agreement</i>	A document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with 36 CFR Part 800.14 (b). [36 CFR Part 800.16 (t)]
<i>Section 106 Review</i>	The review process established under Section 106 of the National Historic Preservation Act and administered by the Advisory Council on Historic Preservation under its regulations in 36 CFR Part 800. This process requires the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, to take into account the effect of their undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking. [16 U.S.C. 470 (f)]
<i>State Historic Preservation Officer</i>	The official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer. [36 CFR Part 800.16(v)] For the purposes of this Programmatic Agreement the office of the State Historic Preservation Officer is located within the Colorado Historical Society.
<i>Tribal lands</i>	All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. [36 CFR Part 800.16 (x)]



Undertaking A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. [36 CFR Part 800.16 (y)].

h) List of United States Department of Agriculture, Rural Development, Proposed Projects, Activities, and Programs Determined Not to be Undertakings:

- (1) Loans and grants to organizations solely for purposes of funding technical assistance;
- (2) Project management activities relating to invitations for bids and contract awards;
- (3) Project management of construction activities;
- (4) Project management activities, including financial assistance, solely for the purpose of refinancing debt;
- (5) Projects solely involving the purchase of office equipment, public safety equipment, and motor vehicles;
- (6) Financial assistance solely for planning purposes, management, feasibility studies, and environmental impact analyses;
- (7) Loan closing and servicing activities without consequence to historic properties;
- (8) Additional financial assistance that does not alter the purpose, operation, location, or design of an approved project; and
- (9) Issuance of regulations and instructions;

i) Programmatic Agreement. A programmatic agreement entitled, "*Programmatic Agreement among the United States Department of Agriculture, Rural Development (Consisting of the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service), the Colorado Historical Society, State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Establishment of Standard Protocols for Compliance with Sections 106 and 110 of the National Historic Preservation Act*" is being jointly developed as of the date of this writing. This document, when officially released, will establish customized norms for the implementation of the Section 106 Process for Rural Development employees, applicants, and borrowers on such topics as: forms to be used; public involvement procedures; standard mitigation measures, etc. Till then, please consult the State Environmental Coordinator regarding these matters.

j) Other References.



- 1) USDA/RUS Environmental Program Library
(Full text of the National Historic Preservation Act)
<http://www.usda.gov/rus/water/ees/toc.htm#Statutes>
- 2) *“Tribal Leaders and BIA Representatives Southwest Region”*
(Bureau of Indian Affairs web-site for tribal leader contacts)
http://www.doi.gov/bia/areas/L_1.html